IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.928 OF 2004.

Madhukar Digambar Washimbekar : Appellant.

versus

Harichandra Rupchand Mandlecha : Respondent.

Mr.S.G.Kudle for the appellant.

Mr.G.S.Godbole for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 22nd September 2005.

ORAL ORDER

1. Heard advocates for the appellant and respondent. Appellant is the original defendant-tenant. The plaintiff/respondent filed a suit against him for eviction by serving him a notice under section 106 of the Transfer of Property Act. Rent Act does not apply to the premises. The envelope containing the notice was returned with the endorsement "not claimed".

Therefore, Mr.Kudle, appearing for the defendant/appellant, on the basis of the judgment of this Court reported in **2001(2) Mh.L.J. 342 [Lalmani Ramnath Tiwari v. Bhimrao Govind Pawar],** contended that where the endorsement is not claimed, that could not be considered as sufficient service.

2. As against this, Mr.Godbole, appearing for the respondent, urged that firstly the landlord examined himself and in order to prove the endorsement he also examined the postman. The postman stated on oath that the intimation of the notice was delivered to the appellant, but nobody has come to claim the notice and the most important thing that was pointed out to me by Mr.Godbole was that the appellant did not examine himself on oath. Therefore, even though the presumption of service is rebutted, there is no evidence in rebuttal. Non examination of the appellant in the court to adduce evidence in rebuttal regarding proper service is fatal to his case. Both the courts, therefore, have rightly rejected his contentions. There is no merit in this appeal. The appeal is dismissed.

[D.G.DESHPANDE,J]